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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,340	03/23/2001	Bert Vogelstein	01107.00074	4414

22907 7590 12/18/2002

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EXAMINER

CANELLA, KAREN A

ART UNIT

PAPER NUMBER

1642

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Advisory Action

Application No.  
09/815,340

Applicant(s)  
Vogelstein et al

Examiner  
Karen Canella

Art Unit  
1642



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Oct 30, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s):

none

4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
see attached

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 10-18 and 23

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-9 and 19-22

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

10. ☐ Other: \_\_\_\_\_

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***Response to Arguments***

1. Applicant argues that there is no motivation to combine the prior art references to render obvious the instant claims drawn to a homozygous securin-defective cell line. Applicant point out that the teachings of Lengauer et al directing one of skill in the art to delete a target gene from a cell line in order to establish that said gene was responsible for chromosomal instability was with regard to genes that behave recessively and therefore do not apply to the instant invention because the cited art teaches that securin functions in a dominant fashion to generate the CIT phenotype. This has been considered but not found persuasive. It is well known in the art that the dominance or recessiveness of a gene varies according to the level of observation. It is noted that heterozygote individuals carrying a recessive genetic defect may have a wild-type phenotype when observed at the clinical level, but when the actual gene function is measured at the biochemical level, said individuals frequently exhibit a lower value for the wild-type gene product as compared to individuals not carrying a genetic defect. In particular it is noted that individuals who are homozygous for a dominant genetic defect are often more severely affected on the clinical level than individuals heterozygous for the same defect. It is reasonable to conclude that the presence of a single wild type gene in heterozygous individuals would contribute to some extent at the biochemical level. Thus, in order to obtain a control cell that is completely deficient in wild-type securin expression on the biochemical level, regardless of whether or not the securin

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gene defect was dominant or recessive, it would be necessary to have a homozygous cell line wherein both copies of the securin gene were defective or deleted.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen Canella whose telephone number is (703) 308-8362. The examiner can normally be reached on Monday through Friday from 8:30 am to 6:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, can be reached on (703) 308-3995. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Karen A. Canella, Ph.D.

Patent Examiner, Group 1642

December 8, 2002

  
KAREN A. CANELLA  
PATENT EXAMINER  
TECHNOLOGY CENTER